

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

Leonard Davis
Petitioner

v

Office of Financial and Insurance Regulation
Respondent

Case No. 12-868-L
Docket No. 12-000540-OFIR

Issued and entered
this 2nd day of November 2012
by Randall S. Gregg
Deputy Commissioner

FINAL DECISION

I. BACKGROUND

This case concerns the application of Leonard Davis (Petitioner) for a resident insurance producer license. The license was denied because the Petitioner was convicted of a felony in 2005.

Petitioner challenged the license denial. A Notice of License Denial and Opportunity for Hearing was issued December 6, 2011. Respondent filed a motion for summary decision. A hearing was scheduled for August 2, 2012. The Petitioner failed to appear for the hearing. The hearing proceeded in the Petitioner's absence. The administrative law judge issued a Proposal for Decision (PFD) granting Respondent's motion and recommending that the license denial be upheld.

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984). The PFD is attached. The findings and recommendation in the Proposal for Decision are adopted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 1239(1)(f) of the Michigan Insurance Code (Code), MCL 500. 1239(1)(f), provides:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

* * *

(f) Having been convicted of a felony.

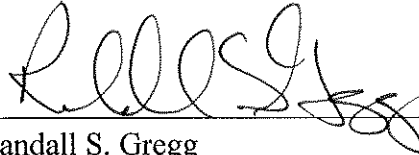
The Commissioner finds that, because the Petitioner has been convicted of a felony, he is ineligible to receive a Michigan insurance producer license.

III. ORDER

The Proposal for Decision is adopted and made a part of this final decision. The refusal to issue an insurance producer license to Leonard Davis is upheld.

R. Kevin Clinton
Commissioner

For the Commissioner:

A handwritten signature in dark ink, appearing to read 'Randall S. Gregg', is written over a horizontal line.

Randall S. Gregg
Deputy Commissioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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OFIR/OGC

IN THE MATTER OF:

Docket No.: 12-000540-OFIR

Leonard Davis,
Petitioner

Case No.: 12-868-L

v

Agency: Office of Financial &
Insurance
Regulation

Office of Financial and Insurance
Regulation,,
Respondent

Case Type: OFIR/OFIS-
Insurance

Filing Type: Appeal

Issued and entered
this 15th day of August, 2012
by: Edward F. Rodgers, II
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereinafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated April 3, 2012. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on March 23, 2012, and an Order Referring Petition for Hearing dated March 22, 2012, issued by the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation under the provisions of the Insurance Code.

Attached to the Request for Hearing were a copy of a Notice of License Denial and Opportunity for Hearing, dated December 6, 2011, and a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, dated January 4, 2012.

On April 16, 2012, the Michigan Administrative Hearing System received Respondent's Motion for Summary Decision and Brief in Support of Motion. On April 20, 2012, an Order Adjourning Hearing and Scheduling In-Person Prehearing Conference was issued and entered. The motion hearing was scheduled for May 3, 2012. On June 5, 2012, an Order Adjourning Oral Argument and Adjourning In

Person Prehearing Conference was issued and entered, scheduling oral argument and the in-person prehearing conference on August 2, 2012.

On August 2, 2012, the motion hearing commenced as scheduled. At the hearing, Elizabeth Bolden appeared as the staff attorney representative on behalf of the Office of Financial and Insurance Regulation, Respondent. Neither Petitioner, nor an attorney on his behalf, appeared at the hearing. The undersigned Administrative Law Judge granted Respondent's Motion for Summary Decision on the record under 1983 AACS, R 500.2111(c).

Respondent's representative requested to be allowed to proceed in Petitioner's absence pursuant to Section 72(1) of the APA, being MCL 24.272(1). In addition, Respondent requested that a default be granted on behalf of the Respondent pursuant to Section 78(2) of the APA, being MCL 24.278(2). Sections 72(1) and 78(2) of the APA provide in pertinent part:

Sec. 72. (1) If a party fails to appear in a contested case, after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.72(1).

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by both parties. MCL 24.78(2).

In accordance with Sections 72(1) and 78(2) of the APA, the hearing proceeded in the absence of Petitioner and a default was granted against Petitioner. Respondent did not present any witnesses at the hearing. The following exhibits were admitted into the record for the Petitioner at the hearing:

1. Respondent's Exhibit No. 1 is a Record of Conviction for Petitioner as of April 20, 2011.
2. Respondent's Exhibit No. 2 is the Individual Licensee Application signed by Petitioner, dated April 15, 2011.
3. Respondent's Exhibit No. 3 is a Notice of License Denial and Opportunity for Hearing, dated December 6, 2011.
4. Respondent's Exhibit No. 4 is a Certification of Felony Conviction from Oakland County Circuit Court for Petitioner.

ISSUES AND APPLICABLE LAW

The central issue presented is whether Respondent has properly denied Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code. These sections provide in pertinent part:

Sec. 1205. A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: * * *

(b) Has not committed any act listed in section 1239(1). MCL 500.1205(1)(b).

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(f) Having been convicted of a felony. MCL 500.1239(1)(f).

FINDINGS OF FACT

Based upon the entire record in this matter, including the exhibits and default granted for Respondent, the following findings of fact are established:

1. On April 15, 2011, Petitioner submitted an application to become licensed as a resident insurance producer in the state of Michigan. [Resp. Exh. 2].
2. Petitioner responded "yes" on the application to the question asking, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" [Resp. Exh. 2].
3. On August 11, 2005, Petitioner pled guilty to the offense of OUIL-3rd, a felony offense, and on September 15, 2005, the felony conviction was entered in Oakland County Circuit Court. [Resp. Exh. 1 & 4].

4. On December 6, 2011, Jean M. Boven, Deputy Commissioner, Licensing & Product Review Division within the Office of Financial and Insurance Regulation, Respondent, issued a Notice of License Denial. [Resp. Exh. 3].
5. On or about January 4, 2012, Petitioner submitted a petition for contested case hearing to appeal the Notice of License Denial. [Resp. Exh. 3].
6. A properly noticed hearing was held on August 2, 2012, at which Petitioner failed to appear and offer evidence in support of his appeal.
7. At the hearing held on August 2, 2012, Respondent's Motion for Summary Decision was granted.

CONCLUSIONS OF LAW

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2).

Under Sections 1205 and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a resident insurance producer license where an applicant has been convicted of a felony. See MCL 500.1205(1)(b) and MCL 500.1239(1)(f), as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

Petitioner, as the complaining party, must go forward with evidence to show that Respondent has wrongfully refused to issue an insurance producer's license for which Petitioner is qualified under Section 1205 of the Michigan Insurance Code of 1956, as amended, MCL 500.100 *et seq.* A default having been granted for Respondent against Petitioner, the allegations set forth by Respondent in the Notice of License Denial are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing where all alleged facts are taken as true. *Smith v Lansing School Dist.*, 428 Mich 248; 406 NW2d 825 (1987).

Based on the above findings of fact and the default granted for Respondent, the undersigned Administrative Law Judge concludes that Respondent has met its burden of proof in this matter. Respondent has proven by a preponderance of the evidence that Petitioner was properly denied licensure as a resident insurance producer in the state of Michigan under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code.

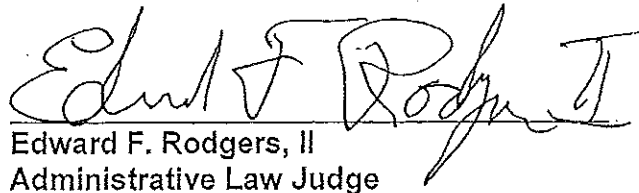
PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order;
2. That the Commissioner deny Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under applicable provisions of the Insurance Code.

EXCEPTIONS

Any exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after exceptions are filed.


Edward F. Rodgers, II
Administrative Law Judge